

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KEVIN L. ALLEN,

Petitioner,

vs.

SCOTT FRAKES, Director NDCS;

Respondent.

8:19CV212

**MEMORANDUM
AND ORDER**

This matter is before the court on Petitioner's Motion to Appoint Counsel. ([Filing No. 17.](#)) "[T]here is neither a constitutional nor statutory right to counsel in habeas proceedings; instead, [appointment] is committed to the discretion of the trial court." *McCall v. Benson*, 114 F.3d 754, 756 (8th Cir. 1997). As a general rule, counsel will not be appointed unless the case is unusually complex or the petitioner's ability to investigate and articulate the claims is unusually impaired or an evidentiary hearing is required. *See, e.g., Morris v. Dormire*, 217 F.3d 556, 558-59 (8th Cir. 2000), *cert. denied*, 531 U.S. 984 (2000); *Hoggard v. Purkett*, 29 F.3d 469, 471 (8th Cir. 1994). *See also* Rule 8(c) of the *Rules Governing Section 2254 Cases in the United States District Courts* (requiring appointment of counsel if an evidentiary hearing is warranted). The court has carefully reviewed the record and finds there is no need for the appointment of counsel at this time.

IT IS THEREFORE ORDERED that:

1. Petitioner's Motion to Appoint Counsel ([Filing No. 17](#)) is denied without prejudice to reassertion.
2. Petitioner is advised that the deadline to file and serve his brief in opposition to Respondent's motion for summary judgment is March 23, 2020. Petitioner may request an extension of time if needed.

Dated this 5th day of March, 2020.

BY THE COURT:

A handwritten signature in blue ink that reads "Richard G. Kopf". The signature is written in a cursive style with a large, stylized "K" and "P".

Richard G. Kopf
Senior United States District Judge